

STATE OF MICHIGAN
COURT OF APPEALS

TINA L. BLACKBURN,

Plaintiff-Appellee,

v

STEPHEN P. CASSANI,

Defendant-Appellee,

and

STATE FARM INSURANCE COMPANY,

Garnishee Defendant-Appellant.

UNPUBLISHED

January 7, 2000

No. 209062

Wayne Circuit Court

LC No. 96-609202 NO

Before: Doctoroff, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Plaintiff filed suit against defendant Stephen Cassani ("Cassani"), alleging claims for assault and battery and negligence, arising from an alleged physical and sexual assault by Cassani. Cassani's insurer, State Farm Insurance Company ("State Farm"), provided Cassani with a defense, but notified Cassani by letter that it was reserving its right to challenge liability for coverage under its policy with Cassani. The action between plaintiff and Cassani was thereafter mediated for \$25,000 and both parties accepted the mediation evaluation, whereupon judgment was entered in favor of plaintiff and against Cassani in accordance with the mediation evaluation. Plaintiff subsequently filed a request for a writ of garnishment against State Farm, seeking to collect under the terms of the insurance policy between State Farm and Cassani. State Farm contested its liability for the judgment, but, after a hearing, the trial court ruled that State Farm was legally estopped from denying liability and ordered State Farm to pay the judgment in accordance with its insurance policy with Cassani. State Farm now appeals as of right. We reverse.

The trial court erred in concluding that State Farm was estopped from contesting coverage under its policy with Cassani because Cassani primary attorney, who had been retained by State Farm,

had accepted the mediation evaluation. Our Supreme Court has recently clarified that an attorney retained by an insurance company to represent an insured owes his or her duty to the insured, not the insurer. *Kirschner v Process Design Associates, Inc*, 459 Mich 587, 597; 592 NW2d 707 (1999). Thus, counsel's role in accepting the mediation award on behalf of Cassani cannot be used against State Farm to support an estoppel theory against State Farm's challenge to coverage under the policy. *Id.* at 597-598.

Moreover, as the Court also makes clear in *Kirschner*, there is no merit to plaintiff's alternative argument in support of estoppel, i.e., that State Farm either did not timely reserve its right to dispute coverage or that it did not provide earlier notice to plaintiff of the existence of a dispute over coverage. State Farm properly reserved its right to challenge coverage under the policy when it sent its reservation of rights letter to Cassani soon after this matter was commenced, regardless of whether plaintiff had notice of the existence of a dispute over coverage. *Kirschner, supra* at 595-596.

State Farm also argues, for the first time on appeal, that it was entitled to summary disposition under MCR 3.101(M)(2), because plaintiff failed to comply with the discovery time limits set forth in that court rule. This issue was not raised or addressed below, nor is the present record adequately developed to enable this Court to decide the issue. Accordingly, we decline to review it. *Richards v Pierce*, 162 Mich App 308, 316; 412 NW2d 725 (1987).

Reversed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly